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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,944	05/03/2006	Hiroki Sato	520-46162X00	5281
20457 7590 12/06/2010 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873				
EXAMINER MARJAN, FARDANESH				
ART UNIT 4123		PAPER NUMBER		
MAIL DATE 12/06/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/577,944

**Applicant(s)**

SATO ET AL.

**Examiner**

MARJAN FARDANESH

**Art Unit**

4123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 05/03/2006, 07/09/2007, 07/09/2007.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The Abstract contains 160 words. Appropriate changes required.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 801(e.g. page 25, line 16). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 7 and 8, line 28 and line 6, respectively, it is suggested that applicant amend the claim language to read "0.3 to 0.7 times".
4. Claim 7, line 8, it is suggested that applicant amend the claim language to read "a light receiving unit, adapted to be disposed on said".
5. Claim 7, the examiner suggests that the applicant reword the mentioned claim portion as " maintaining a sum of intensity of the irradiated light in said first wavelength range at a region x on the trial subject irradiated with the light and intensity of the irradiated light in said second wavelength range not higher than prespecified value".
6. With respect to claim 8, lines 2-3, the examiner suggests that the applicant reword the mentioned claim portion as "wherein the unit is configured so that the intensity of irradiated light".
7. With respect to claim 9 and 10, the language "living body" is inconsistent with the language "trial subject" mentioned in rest of the claims. Applicant is suggested to maintain consistent claim terminology throughout the claimed invention.
8. Claim 10, lines 4-5, it is suggested that applicant amend the claim language to read "time between "a" and "b", wherein "a" denotes a ratio of irradiated light" and also, in regards to line 9, it is suggested that applicant amend

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the claim language to read "first measured living body, and "b" denotes a ratio of".

9. Claim 12, line 4, it is suggested that applicant amend the claim language to read "and configured to be set on a head".

10. Claims 8-12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 8-12 improperly depends on cancelled claim 1 and/or claim 4.

Appropriate correction is required.

11. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

The applicant canceled claim 6, and also inserted claim 6 after claim 11; claim numbering must be consecutive. Misnumbered claim 6 has been renumbered 12 for examination purposes.

***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. With respect to claim 7, although the claim sets forth that "biological information .... is measured" no particular element is indicated that is configured to perform the actual measurement. Though the claim does set forth what the measurement will be based on, it fails to set forth any specific element for measurement of the biological information. In reviewing applicant's specification, the "unit for changing a ratio" is appears to be configured to perform the desired measurement. If so, such structure should be claimed accordingly. The claim should positively recite the relationship. Appropriate correction is required.
14. With respect to claim 7, line 24, the scope of the claim is not clear because the claimed language of "unit" does not appear to be tied to a specific structure/functional relationship. The previously claimed units (i.e. light irradiating and light receiving) are tied to a specific functional relationship in the overall biological photometric equipment. Though it is apparent that applicant is claiming a new "unit", it is not so apparent what controls said unit. Appropriate correction is required.
15. With respect to claim 8, line 2, the scope of the claim is not clear because the claimed language of "unit" does not appear to be tied to a specific structure/functional relationship. The previously claimed units (i.e. light irradiating and light receiving) are tied to a specific functional relationship in the overall biological photometric equipment. Though it is apparent that applicant is claiming a new "unit", it is not so apparent what controls said unit. Appropriate correction is required.

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16. With respect to claim 9, line 10, it is not clear which "calculation" the applicant is referring to, since the claim language stipulates two different types of calculations (i.e. measurement error, and ratio). Appropriate correction is required.

17. Claim 7 recites the limitation "first wavelength" at the end of line 4. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 7 recites the limitation "irradiated light" in line 19. There is insufficient antecedent basis for this limitation in the claim.

19. Claim 7 recites the limitation "irradiated light intensities" in line 25. There is insufficient antecedent basis for this limitation in the claim.

20. Claim 7 recites the limitation "intensity" in line 25. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 8 recites the limitation "unit" in line 2. There is insufficient antecedent basis for this limitation in the claim.

22. Claim 8 recites the limitation "ratio" in line 3. There is insufficient antecedent basis for this limitation in the claim.

23. Claim 8 recites the limitation "irradiated light intensities" in line 3. There is insufficient antecedent basis for this limitation in the claim.

24. Claim 8 recites the limitation "intensity of irradiated light" in line 4. There is insufficient antecedent basis for this limitation in the claim.

25. Claim 8 recites the limitation "irradiated light" in line 7. There is insufficient antecedent basis for this limitation in the claim.

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26. Claim 9 recites the limitation "ratio of irradiated light" in line 5. There is insufficient antecedent basis for this limitation in the claim.
27. Claim 9 recites the limitation "measurement error" in line 6. There is insufficient antecedent basis for this limitation in the claim.
28. Claim 12 recites the limitation "trial subject" in line 4. There is insufficient antecedent basis for this limitation in the claim.
29. Claim 12 recites the limitation "plurality of light irradiating units" in line 4. There is insufficient antecedent basis for this limitation in the claim.
30. Claim 12 recites the limitation "plurality of light receiving units" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARJAN FARDANESH whose telephone number is (571)270-5508. The examiner can normally be reached on Monday Thursday 8:00 a.m.-5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571)272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MARJAN FARDANESH/  
Examiner, Art Unit 4123

/Derris H Banks/  
Supervisory Patent Examiner, Art Unit 3729